THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0117, State of New Hampshire v. Alan S. Lighthall, the court on February 23, 2006, issued the following order:

The defendant appeals his conviction for driving while intoxicated. He contends that the trial court erred in denying his motion to suppress. We affirm.

Our review of a trial court's order on a motion to suppress is de novo, except as to any controlling facts determined by the trial court. State v. Cowles, 152 N.H. 369, 371 (2005). In this case, the State concedes that the arresting officer's entry into the defendant's home was unlawful. The issue before us is whether the defendant's subsequent consent to return to the accident scene was an exploitation of that illegality. See State v. Hight, 146 N.H. 746, 749 (2001). To determine whether the State has purged the taint of unlawful entry followed by consent to search, we consider the following factors: (1) the temporal proximity between police illegality and consent to search; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of official misconduct. See id. at 750.

In this case, although there was temporal proximity between the unlawful entry and the defendant's consent to return to the accident scene, the intervening circumstances included the defendant's willingness to remain downstairs in his home and answer the police officer's questions and his subsequent decision to allow his wife to drive him back to the accident scene. No evidence was obtained at the defendant's home; the officer went there to make sure that the defendant was uninjured in light of his severely damaged vehicle and to ascertain the cause of the accident. Nor is this a case where the procedures used by the arresting officer were deceptive, see State v. Watson, 151 N.H. 537, 541 (2004). Accordingly, we conclude that the State purged the taint of unlawful entry.

While the defendant also argues that the arresting officer failed to advise him that he could withhold his consent to return to the scene of the accident, he makes no other argument that his consent was not voluntary. Having reviewed the record before us, we find no error in the trial court's ruling that his consent to return was voluntary. See id. at 540 (voluntariness is question of fact and trial court's ruling on consent will not be reversed unless unsupported by record).

Nor did the trial court err in denying the defendant's motion to reconsider. Even if we assume without deciding that his motion was timely filed, see Super. Ct. R. 59-A, it set forth no arguments that we have not considered in this order.

Finally, we find no merit in the defendant's argument that State v. Beauchesne, 151 N.H. 803 (2005), required that his motion to dismiss be granted. Unlike the facts in this case, in Beauchesne, we considered whether allowing the admission of evidence seized as a result of a defendant's illegal arrest would violate a defendant's right under our State Constitution. Id. at 818. We reaffirmed, however, that "the exclusionary rule does not bar the admissibility of evidence if the State proves that circumstances exist such that the taint of the primary illegality is purged." Id. at 817. This is such a case.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk